STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Framework for Broadband Internet Service*, GN Docket No. 10-127

Between a few big industry players who never liked the telecommunications law passed by Congress and previous Commissions only too ready to sacrifice the public interest to special interests, consumers find themselves in quite a box. We are on the cusp of perhaps the greatest communications revolution since the printing press, yet we enter this new Digital Age arguably shorn of the ability to offer consumers the most basic of protections—such as insuring their security, safeguarding their privacy, providing them with the benefits of competition and making sure that dynamic new technologies are available to them and are open to the maximum extent possible—without needless gatekeeper control at the on-ramps to the information highway.

For much of the past decade, the FCC took American consumers on a costly and damaging ride, moving broadband Internet connectivity outside the statutory Title II framework that applies to telecommunications carriers. This was a major flip-flop from the historic—and generally successful—approach of requiring non-discrimination in our communications networks. I didn't buy it—and now we know from its *Comcast* decision that the D.C. Circuit Court of Appeals didn't buy it either. In fact, by taking the country on the joyless ride it did, the Commission essentially issued a gilt-edged invitation to the court to rule as it did. Previous Commissions are much more the culprit here than any court. After all, they were relying on an approach that was fundamentally at odds with the purposes set out in the Telecommunications Act of 1996. Anyone who thinks Congress envisioned deploying the new communications technologies and services of the Digital Age without the safeguards that generations of consumers and consumer advocates fought for and won has missed the meaning of the law and the intent of our elected representatives. I cannot believe that Congress ever envisioned that its fundamental statutory requirements could be made obsolete by a new service offering.

Permitting this chaotic stand-off to persist can only leave consumers, innovators and even broadband companies themselves on an uncertain and perilous path. Today, in an effort to right the wrong-headed policies of recent years, we tackle one of the most difficult challenges ever to confront this Commission. I commend Chairman Genachowksi for launching this proceeding and I encourage its speediest possible resolution. Some believe that, to achieve one or more of our goals, the Commission could try—on a case-by-case basis—to make better-articulated Title I arguments that may persuade some court somewhere. Maybe. But case-by-case inevitably becomes court case-by-court case. Down this path would be years and years of dead-end delays, years without the most elemental public interest safeguards for broadband, and years of agency paralysis. It would be death by a thousand cuts. Why rest our case on the weakest part of the law when relying on the directly applicable stronger part of the statute is quicker, easier and, most importantly, consumer-friendlier? More years fighting back a costly and seemingly endless stream of court challenges to every action the Commission takes can only consign the United States to the digital dust as other countries focus on actually building out consumer-friendly advanced telecommunications (*i.e.*, broadband).

How did we get here? It is a sad—and all too familiar—tale where the law was twisted to shamefully promote the interests of a powerful few ahead of the interests of consumers. It began in 2002 with a Notice of Proposed Rulemaking on the classification of broadband services delivered by wireline providers. Then, just one month later and over the strong dissents of Commissioner Adelstein and me, the Commission issued a Declaratory Ruling that moved cable modem services away from any real oversight by classifying them as unregulated "information" services, subject only to the vague ancillary authority of Title I. Not only did that ruling place cable modem services into regulatory never-never land, but it struck at the very heart of this agency's ability to do its job of protecting public safety, promoting universal service, ensuring disabilities access, fostering competition and safeguarding consumers in a broadband world. In my 2002 dissent, I said that the Commission was taking "a gigantic leap down the road of removing core communications services from the statutory frameworks established by Congress, substituting our own judgment for that of Congress and playing a game of regulatory musical chairs by moving technologies and services from one statutory definition to another." We moved the chairs—but it sure wasn't musical. Throw into this bubbling cauldron of trouble one subsequent agency decision after another to grant big industry players forbearance from their legal requirements to promote competition and consumer choices and you begin to get the picture of how we spent the bulk of the past decade around here.

I, for one, am worried about relying only on the good will of a few powerful companies to achieve this country's broadband hopes and dreams. We see what price can be paid when critical industries operate with unfettered control and without reasonable and meaningful oversight. Look no further than the banking industry's role in precipitating the recent financial meltdown or turn on your TV and watch what is taking place right now in the Gulf of Mexico.

Throughout the course of the Commission's deregulatory binge, we were given repeated assurances that there was no need to worry. Somehow we would find enough jurisdiction under Title I "ancillary authority" to do our job. In truth, and not to be too conspiratorial about it, I rather believe that those who devised this abdication of our oversight responsibilities did so fully aware of what they were doing and who they were really helping. And they pressed on. In 2005, the Commission extended its oversight abdication by reclassifying DSL. The die had been cast by then, Justice Scalia and me to the contrary notwithstanding, and the challenge Commissioner Adelstein and I faced was to rescue what we could from the accident scene. About all we could manage was some—albeit inadequate—commitment that the Commission would have the ability to move forward with certain basic statutory obligations related to homeland security, universal service, disabilities access and competition, if it was wont to do so. It wasn't often wont to do so. More formatively, we were able to win Commission adoption for the historic *Statement of Policy* on Internet openness—something which I had long advocated. We couldn't get all the way there in that *Statement*, but we laid down the markers which I hope the present Commission will extend in the months ahead.

In sum, the Commission had moved its authority and oversight of advanced telecommunications to a part of the statute where those services would have a steep hill to climb to win even the most basic consumer safeguards. But let's be clear here. We still have the original authority the Commission moved away from. It reposes in the statute. It is there for us to use—by sun-up tomorrow, if we choose. It rests on history and precedent. And, soundly

argued in court, it puts us on much firmer legal footing to survive the inevitable industry challenges that are coming anyway than does trying to stand our ground on the quicksand of Title I. We need to reclaim our authority.

One other thing is at risk here—something pretty huge. I haven't yet mentioned the National Broadband Plan, the proud achievement of Chairman Genachowski's Broadband Team here at the Commission. The Team worked for nearly a year to provide our country with something it lacked (and almost every other leading industrial country possessed)—a national strategy to encourage the deployment and adoption of high-value, high-speed broadband for every citizen in the land. The *Comcast* decision puts crucial parts of the National Broadband Plan in jeopardy and on hold—potentially squandering the nation's historic opportunity to build this vital infrastructure of the Twenty-first century that will open so many doors for so many people.

We cannot let that happen. Too much is at stake. Our global competitiveness depends on this new telecommunications infrastructure. Broadband is not technology for technology's sake—it is important because it really can be our "Great Enabler." This is technology that intersects with every great challenge confronting our nation—improving energy efficiency, halting climate degradation, improving healthcare for all our citizens, educating our young (and our old, too), helping individuals with disabilities to realize their full potential, creating new public safety tools for first responders and opening the doors of economic and social opportunity for all. Broadband connectivity is about even more than that. Increasingly our national conversation, our news and information, our knowledge of one another, will depend upon access to the Internet. Each of these challenges I have mentioned has a broadband component as part of its solution. None has a solution without this broadband component. Private enterprise must lead the way with investment and innovation in broadband, to be sure. But only when it is accompanied by visionary public policy and meaningful oversight can we ensure that broadband will get built out to places where business has no incentive to go. We can no longer afford digital divides between haves and have-nots, between those living in big cities and those living in rural areas or on tribal lands, between the able-bodied and persons with disabilities.

Since the *Comcast* decision, I have heard opponents of reclassification make a number of self-serving arguments that range from the often-frivolous to the sometimes-nonsensical. For starters, let me be clear. Despite all the spin to the contrary, we are not talking—even remotely—about regulating the Internet. We are talking about meaningful oversight of the infrastructure and services that allow Americans to get to the Internet. This isn't about government regulating the Internet—it's about making sure that consumers, rather than a handful of entrenched incumbents, have maximum control over their access to the Internet.

I have also heard the perplexing contention by some that the Commission cannot move back to Title II classification because there have been no "changed circumstances," which are supposedly needed to justify such a correction. No changed circumstances? Have the mind-bending changes we have seen throughout the country and around the world due to broadband access to the Internet been anything short of revolutionary? I don't think so. The market for broadband technologies and services, and the ways in which we as a people communicate, have undergone seismic changes over just the last decade. Remember that it was not so long ago that

many Americans were just getting used to the Internet, and independent Internet service providers like AOL and CompuServe were the names of the game. Since then, it is a few huge access providers that have become the only real broadband game in town. Resellers and competitive local telephone companies have been driven from the field, for the most part. And competition—that wonderful goal of the 1996 Telecommunications Act—reposes more in our hopes and dreams than it does on the bottom line of the monthly phone and cable bills we all get to pay. How can anyone fail to find "changed circumstances" in these revolutionary transformations?

So beware of all the slick PR you hear, and remember that much of it is coming from lavishly-funded corporate interests whose latest idea of a "triple play" is this: (1) slash the FCC's broadband authority; (2) gut the National Broadband Plan; and (3) kill the open Internet.

Today we launch a proceeding to look at the options available to us. Should we continue down our failed Title I path? Should we rely on the full range of Title II requirements and safeguards? Or should we take a "third way" by applying a limited number of fundamental provisions of Title II to Internet access service? I have said before that plain and simple Title II reclassification through a prompt—and by that I meant immediate—declaratory ruling, accompanied by limited, targeted forbearance from certain provisions—would have been the quickest and cleanest way to remove all question marks. Clear rules of the road don't just help consumers—they provide clarity and certainty to business, too. My former boss, the legendary Senator Fritz Hollings, frequently reminded us that "business can't operate with a question mark." Commission policies over the past decade have been replete with question marks for business, for consumers, for all of us.

So let's develop the record through this Notice, as quickly as we can. Let's then analyze the record, develop final recommendations and vote them out with the sense of urgency that the present situation compels. Let us put an end to a decade of detours and derailment, and ensure, for every American, a communications infrastructure that serves their purposes, protects their interests and vindicates the awesome promise of the Digital Age.